IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6301 OF 2007

Baban Dnyanoba Kshirsagar .... Petitioner

versus

Balasaheb Babanrao Aavati ..... Respondent.

Shri Sagar Kasar for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 17TH SEPTEMBER, 2007

P.C.;

1. By this writ petition, the petitioner/defendant has questioned the legality and validity of the order passed by the trial court rejecting the application for amendment of the written statement. Perusal of the order reveals that the petitioner/defendant has not been diligent in defending the suit in as much as no written statement order was passed and later on an order of no cross examination was also passed. At a subsequent point of time, the trial court permitted the present petitioner to contest the suit by permitting filing of written statement and the petitioner was also allowed to cross examine the witnesses. Despite granting repeated chances, the petitioner only kept on assuring the trial court that he would proceed with the cross examination on the

next date. Ultimately instead of proceeding with the cross examination, the present application for amendment came to be filed stating therein that the earlier advocate has not properly pleaded the case of the defendant. The trial court has found that the defendant was very much aware about the facts, which are attempted to be pleaded by the amendment application and thus the proviso to Rule 17 of Order 6 would operate. The trial court has also held that, had the defendant been diligent, he could have brought the facts on record before commencement of the trial. The plaintiff's examination in chief affidavit is also filed and the matter has been adjourned from time to time for cross examination. A further finding is recorded by the trial court that the application for amendment is not bonafide but has been filed malafidily with a view to delay the proceedings.

2. Perused the order. The same does not call for any interference in exercise of writ jurisdiction. In the result, the writ petition is summarily rejected.

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